



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200847023

Uniform Issue List: 408.03-00

AUG 29 2008

SE:T:EP:RA:T4

**Legend:**

Taxpayer P =  
Institution X =  
Institution Y =  
IRA M =  
Entity F =  
Entity G =  
Company H =  
Advisor J =  
Account N =  
Amount A =  
Date 1 =

Dear :

This is in response to your request dated July 31, 2007, as supplemented by correspondence dated May 30 and June 26, 2008, in which your authorized representative, on your behalf, requests a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer P was the owner of IRA M, which was maintained for him by Institution X. On or about Date 1, Taxpayer P, having learned about an opportunity to invest in Entity F from Advisor J, directed Institution X to invest a portion of IRA M in Entity F. Institution X informed Taxpayer that it could not continue to serve as the custodian of IRA M if this investment was made. Advisor J then advised Taxpayer P that Company H, which was handling the paperwork for Entity F, could arrange for IRA M to invest in Entity F using Institution Y. Taxpayer P, with guidance from Company H, then completed the paperwork for the investment, indicating that the investment was being made by an IRA. After the paperwork was accepted, Taxpayer P intended to roll over Amount A from IRA M to an IRA that he believed was being set up by Institution Y. To

accomplish this, Taxpayer P directed Institution X to wire Amount A to Account N at Institution Y, the number of which account was provided to Taxpayer P by Entity F. However, Account N was not an IRA account, a fact that Taxpayer P became aware of only after the end of the 60-day period for completing a rollover prescribed by section 408(d)(3) of the Code. Taxpayer P asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to errors committed by a Entity F, Company H, and Institution Y.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount A.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer P is consistent with his assertion that his failure to roll over the distribution within the 60-day rollover period prescribed by section 408(d)(3) of the Code was a result of errors committed by Entity F, Company H and Institution Y.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA M. Taxpayer P is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code except the 60-day requirement are met with respect to such contribution, Amount A will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling is based on the assumption that IRA M met the requirements of Code section 408(a) at all relevant times.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact

(ID # ) at (202) - . Please address all correspondence to  
SE:T:EP:RA:T4.

Sincerely yours,

  
Donzell H. Littlejohn, Manager,  
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose